STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERICH ALAIN HENGY,

Defendant-Appellant.

UNPUBLISHED
October 20, 2009

No. 287954
Monroe Circuit Court
LC No. 08-036806-FH

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of resisting or obstructing a police officer, MCL 750.81d(1). Because the prosecutor presented sufficient evidence to support defendant's conviction, the verdict was not against the great weight of the evidence, and defendant was not denied the effective assistance of counsel at trial, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The prosecuting attorney presented evidence that a police officer observed defendant driving over the speed limit and across the center line. The officer affected a traffic stop. The officer asked defendant to step out of his car for field sobriety testing, but defendant announced his refusal and locked the doors and raised his window most of the way. The officer warned defendant that he was risking a charge of resisting or obstructing, but to no avail. The officer called for backup, and while awaiting it ran a check and discovered that defendant was wanted on a warrant for driving on a suspended license. When additional officers arrived, defendant was informed that there was a warrant for his arrest. After 25 or 30 minutes had passed, one officer was able to squeeze his hand through the window and unlock the door, but when the police attempted to open it defendant forcibly held it closed. Other officers were finally able to open the passenger door and unbuckle defendant's seat belt. Defendant then surrendered without further incident.

On appeal, defendant argues that his conviction was based on legally insufficient evidence, or, alternatively, was contrary to the great weight of the evidence, and also that he was deprived of the effective assistance of trial counsel.

I. Sufficiency/Great Weight of the Evidence

Whether the prosecutor presented sufficient evidence to support a verdict of guilty is a question of law, calling for review de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001); *People v Medlyn*, 215 Mich App 338, 340-341; 544 NW2d 759 (1996). When reviewing the sufficiency of evidence in a criminal case, a reviewing court must view the evidence of record in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

We review a trial court's decision on a motion for a new trial on the ground that the verdict was against the great weight of the evidence for an abuse of discretion. See *People v Lemmon*, 456 Mich 625, 648 n 27; 576 NW2d 129 (1998). A trial court might disturb a jury verdict where testimony upon which it depended is "patently incredible or defies physical realities," or where "the [witness'] testimony has been seriously impeached and the case marked by uncertainties and discrepancies." *Id.* at 643-644 (internal quotation marks and citations omitted).

MCL 750.81d(1) sets forth penalties where an individual "assaults, batters, wounds, resists, obstructs, opposes, or endangers" a police officer. Defendant argues that conviction requires conduct fitting the definitions of all seven of those verbs, and argues that the lack of evidence that defendant assaulted, battered, or wounded any police officer renders his conviction invalid. We reject such a narrow reading of the statute. One can hardly assault, batter, wound, or otherwise endanger a police officer without also resisting, obstructing, or opposing that officer. When construing a statute, a court should presume that every word has some meaning. *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004) (conflict resolution panel). Accordingly, the seven actions set forth as prohibited by MCL 750.81d(1) are better understood as overlapping alternatives, such that the conduct described by any one of them may establish a violation of the statute. In this case, the evidence that defendant disobeyed a lawful command, and forcibly resisted the officers' attempt to open his car door, was a sufficient basis for finding him in violation of MCL 750.81d(1).

Regarding defendant's argument concerning the great weight of the evidence, defendant fails to indicate that the trial court was asked to rule on such a motion. Challenges that the verdict was against the great weight of the evidence require preservation. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999). Were we to credit a great-weight challenge raised for the first time on appeal, we would not decide the matter from the cold record, but would remand the case to the trial court for appropriate findings of fact and conclusions of law. See *id*.

We see no such necessity here. We review unpreserved issues for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). It was not plain error for the trial court to decline to order a new trial sua sponte on the ground that the verdict was against the great weight of the evidence. "[T]he hurdle a judge must clear to overrule a jury is unquestionably among the highest in our law," and must be approached "with great trepidation and reserve, with all presumptions running against its invocation." *Lemmon, supra* at 639 (internal quotation marks and citation omitted). Defendant points to no prosecution testimony that may be fairly characterized as patently incredible or in defiance of the laws of physics. As such, he fails to show that setting aside the jury's verdict would have been justified, let alone that the trial court erred in failing to do so on its own initiative. See *id*. at 643-644.

For these reasons, we reject these challenges to the evidentiary foundations underlying defendant's conviction.

II. Assistance of Counsel

"In reviewing a defendant's claim of ineffective assistance of counsel, the reviewing court is to determine (1) whether counsel's performance was objectively unreasonable and (2) whether the defendant was prejudiced by counsel's defective performance." *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). Regarding the latter, the defendant must show that the result of the proceeding was fundamentally unfair or unreliable, and that but for counsel's poor performance the result would have been different. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997). Because defendant did not move for a new trial or a *Ginther*[1] hearing below, our review is limited to mistakes apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

Defendant argues that defense counsel was ineffective for having failed to object when the prosecuting attorney elicited testimony concerning the existence of an arrest warrant for him stemming from his driving on a suspended license. Because trial counsel is not required to advocate a meritless position, we conclude that no such objection would likely have been sustained. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000). A jury is entitled to hear the "complete story" of the matter in issue. *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996), quoting *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). Accordingly, "'[e]vidence of other criminal acts is admissible when so blended or connected with the crime of which defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime.'" *Id.* at 742, quoting *State v Villavicencio*, 95 Ariz 199, 201; 388 P2d 245 (1964). In this case, the prosecuting attorney legitimately brought to light that the police had a valid basis for informing defendant that he was under arrest, and thus that their command that he leave his vehicle was one he was obliged to obey. Further, the risk of unfair prejudice was slight. Defendant was on trial for resisting or obstructing the police, not for a driving offense. It strains at credulity to suggest that the jury declared defendant guilty of resisting or obstructing because it was concerned that defendant had driven on a suspended license. For these reasons we reject defendant's claim of ineffective assistance.

Affirmed.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Pat M. Donofrio

[1] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).